

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION for preparation of a factual record concerning submission SEM-17-001 (Alberta Tailings Ponds II)

I. The factual record process

Pursuant to NAAEC Article 15(4), in preparing factual records the Secretariat will consider any information furnished by a Party and may consider relevant technical, scientific or other information that is publicly available; submitted by the Joint Public Advisory Committee (JPAC) or interested nongovernmental organizations or persons; or developed by the Secretariat or independent experts.

On 20 August 2018, in Council Resolution 18-01, the CEC Council instructed the Secretariat to prepare a factual record for submission SEM-17-001 (Alberta Tailings Ponds II) in response to the Secretariat's recommendation in its notification of 19 April 2018. The Secretariat is therefore requesting relevant information relating to the matters to be addressed in the factual record and would ask this information be furnished by 4 February 2019.

II. Request for information

In conformity with NAAEC Article 15(4), the Secretariat hereby requests relevant factual information from the governmental authorities of the Party concerning the following matters arising in the context of Submission SEM-17-001 and related to effective enforcement of subsection 36(3) of the Fisheries Act:

- A. The state of the publicly available peer-reviewed science on identifying differences between naturally-occurring, bitumen-influenced water and anthropogenic oil sands process-affected water;
- B. Alberta's relationship with Canada with respect to the assertions and specific sites referred to in the submission, as well as other specific sites mentioned in Canada's response; and
- C. How the Oil Sands Monitoring Program (formerly the Joint Oil Sands Monitoring Program) is carried out and how it fits into Canada's enforcement of the Fisheries Act.

III. Examples of relevant factual information

Examples of factual information that are necessary for the preparation of the factual record are given below. You are kindly requested to send this information in electronic format to facilitate its management and integration. Information sent to the CEC Secretariat is understood to be subject to no limitations as regards confidentiality.

- A. With respect to paragraph II (A) above:
 - 1. Records from 2015 and subsequent years, which discuss, summarize, or reference publicly available peer-reviewed science on identifying differences between naturally-occurring, bitumen-influenced water and anthropogenic oil sands process-affected water.

B. With respect to paragraph II (B) above:

1. Written agreements between Canada and Alberta regarding the enforcement of section 36(3) of the Fisheries Act or intergovernmental cooperation involving tailings ponds associated with oil sands facilities,¹ including all policies, directives, guidelines or other documents interpreting, implementing, or referencing these agreements or the relationship/cooperation between Canada and Alberta on the regulation of tailings ponds.
2. Records evidencing communication between Canada and Alberta which discuss the specific oil sands facilities referenced in the submission² and Canada's response to the submission.³
3. Records created since 2008 related to the Management Committee established under section 6 of the *Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act*, including those related to the responsibilities of the Management Committee (see 6.3 of the agreement) and those related to the annual report (see section 6.3 (8) of the agreement).
4. Records from the Province of Alberta which describe Alberta's legal and regulatory program relating to the leaking of deleterious substances into Alberta waters and which may relate to the Alberta's relationship with Canada under section 36(3) of the Fisheries Act, including records which discuss any differences between the federal program under the Fisheries Act and the Alberta provincial program, and any records relating to the transfer of enforcement responsibility from AEP to AER (including the responsibilities of the Dam Safety Branch).
5. Records relating to any recommendations or follow-up programs established through the joint environmental assessment process for mineable oil sands projects relating to the potential release of substances from tailings ponds into waters regulated by Canada or Alberta.
6. Records relating to any intent to develop a set of applicable effluent regulations under section 36 (5 or 5.1) of the Fisheries Act related to oil sands tailings ponds, including the scope of said potential regulations.
7. Records related to the notification requirements of section 38(5) of the Fisheries Act requiring notification of a deposit of a deleterious substance in waters frequented by fish that is not authorized under section 36(3).

C. With respect to paragraph II (C) above:

1. Policies and/or guidance documents relating to the implementation of the monitoring program and how it relates to the enforcement of section 36(3) of the Fisheries Act.

¹ The Secretariat is aware of the following three written agreements and has copies of them: the *Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act* (1994); the *Canada-Alberta Agreement on Environmental Assessment Cooperation* (2005); and the *Canada-Alberta Environmental Occurrences and Notifications Agreement* (2010/2011).

² See Submission, pp. 1, 4, and 5.

³ See Annex 2 of Canada's Response to the Submission.

2. Records relating to instances in which the governments of Alberta and Canada requested from or shared information with each other relating to the regulation of oil sands tailings ponds.
3. Monitoring data records from 2017 and 2018 for the Suncor Tar Island Pond 1 and the Syncrude Canada Limited Aurora Operation tailings ponds and related to any exceedances of any applicable water quality standards or guidelines, under either federal or provincial law.
4. Records relating to any proposed or implemented changes to the monitoring program which relate to the enforcement of section 36(3) of the Fisheries Act.
5. Records relating to any OSMP project regarding methods for monitoring bitumen-influenced waters in the Athabasca region relating to tailings ponds, including:
 - a. records relating to the distinction between industrially-derived chemicals from those that are naturally occurring in waters;
 - b. records relating to whether such project is ongoing, whether it is currently funded, and, if it is not currently funded, why it is not;
 - c. records relating to any data results or data collection efforts relating to such project; and
 - d. records relating to the establishment of an analytical toolbox as identified on pages 21-23 of Canada's response to the Submission.
6. Records relating to the enforcement of Alberta's provincial regulatory program under the Alberta *Environmental Protection and Enhancement Act* (EPEA) with respect to the release of any substance into tailings ponds or from tailings ponds into waters in the Athabasca region which may violate the EPEA.

IV. Where to send the information

The Secretariat requests that relevant responsive information be in electronic form and be sent by email to <sem@cec.org>. Large files can be uploaded via cloud storage platforms such as SkyDrive, Google Drive, or Dropbox.

Where the information is not available in electronic format, please send it to the following address:

Commission for Environmental Cooperation
Attn: Robert Moyer, SEM Unit
700 de la Gauchetière Street West
Suite 1620
Montréal, Québec, H3B 5M2
Tel.: (514) 350-4340